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Ex Parte Presentation

March 27, 1998

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Mr. Richard Metzger
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M St., NW
Washington, DC 20554

Re: Toll Free Service Access Codes, CC Docket No. 95-155

Dear Mr. Metzger:

On February 24, 1998, the Commission received a "Written Ex Parte Presentation and Motion to Defer 877 Implementation" from Response Trak Call Centers proposing a reassignment of existing toll free numbers depending upon the use to which the toll free number is put, and requesting a deferral of implementation of the third toll free Service Access Code (SAC), 877, pending resolution of several outstanding issues in this proceeding and consideration of Response Trak's instant proposal. Specifically, Response Trak has suggested that "enterprise" toll free numbers -- those used primarily by businesses (including non-profit enterprises) for "many-to-one" applications -- be assigned from the existing 800 and 888 SACs, and "communicator" toll free numbers -- those used primarily for private, personal or access communications with one-to-one or few-to-one applications -- be assigned from the 877 SAC. Under Response Trak's proposal, existing 800 and 888 "communicator" applications must be moved to the 877 or other "non-enterprise" SACs. Existing 800 or 888 "enterprise" subscribers would be given immediate right of first refusal for the corresponding number in any other "enterprise" SAC. As discussed briefly below, Response Trak's recommendation will severely disrupt the toll free services market for both new and existing customers, is wasteful, and is administratively burdensome. Its recommendation should accordingly be rejected.

Response Trak's proposal is disruptive. Approximately 87% of available toll free numbers in the 800 and 888 SACs were already in working status as of March 22, 1998. Implementation of the 877 SAC is scheduled for April 5, 1998, and delay much beyond that point could result in total exhaustion of the 800 and 888 resource. Delaying the roll-out of the 877 SAC, as recommended by Response Trak, will deny thousands or millions of potential and existing subscribers the opportunity to implement their new or expanded

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toll free service applications for some unspecified period of time.¹ Response Trak has failed to demonstrate that the purported benefits of its proposal outweigh the harm associated with holding back a public resource which is essential to satisfying demand for a rapidly growing telecommunications service.

There can be no doubt that Response Trak's proposal to force existing 800 and 888 service subscribers with "communicator" applications to migrate to the 877 SAC would also be extremely disruptive to those subscribers and their customers² as well. Although Resp Orgs have no easy means of determining which of their subscribers use their toll free numbers for "communicator" applications, much less of determining how many customers use each toll free code held by each "communicator" subscriber, it does not seem unreasonable to speculate that a forced migration of existing customers with "communicator" applications could affect millions of users. Response Trak makes no effort to quantify the number of users affected or the cost such users will incur to comply with a forced migration. Without such information, it is impossible to weigh the relative costs and benefits of Response Trak's proposal or to conclude that such proposal serves the public interest.

Response Trak's proposal is wasteful. Response Trak's proposal to allow "enterprise" users the infinite right of first refusal is extremely wasteful. As Sprint has explained in detail elsewhere,³ adoption of a "right of first refusal" policy would lead to premature exhaust of subsequent toll free SACs, would provide an undue advantage to incumbent toll free subscribers, and would make it more difficult for new subscribers to obtain certain "good" toll free numbers. Although Sprint cautiously supported allowing existing commercial 800 customers the right of first refusal for the corresponding number in the 888 SAC, we continue to believe that extension of this policy to any subsequently opened toll free SAC is both unnecessary and wasteful (*id.*).⁴

¹ It is likely that many toll free service subscribers have business plans incorporating the new toll free numbers that they reasonably expected to obtain after April 5, 1998. These plans would obviously be disrupted if availability of new 877 numbers were delayed.

² Under Response Trak's proposal, entities such as paging companies with 800 or 888 numbers would be forced to migrate to the "communicator" toll free SAC. The Commission should bear in mind that the migration of a single toll free number used by a paging company could affect thousands of the paging company's customers, since by using individual PINs, multiple customers can use the same toll free number.

³ See Sprint's Comments in this docket filed July 21, 1997, pp. 1-4.

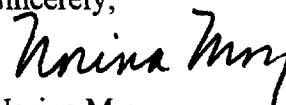
⁴ In an ex parte letter dated March 13, 1998, Response Trak complains (p. 3) that large Resp Org/carriers have little interest in protecting existing 800/888 users with respect to the 877 SAC because large Resp Org/carriers have access to the SMS database which is superior to that of smaller Resp Org/carriers, and thus "have the ability to 'self-replicate' with 877 numbers." This is an issue which the Commission has already considered, correctly stating that the use of MGI, a generally available, tariffed service which offers

Response Trak's proposal is administratively burdensome. Response Trak's proposal to segregate "enterprise" and "communicator" applications is administratively burdensome. It would be extremely difficult and time-consuming for Resp Orgs to determine into which category each of its toll free subscribers falls, to ensure that new toll free service applicants correctly categorize their intended use of the toll free number requested, and to negotiate and manage migration dates for potentially millions of "communicator" 800 and 888 service subscribers.

Furthermore, although Response Trak characterizes its proposal as "simple" (para. 36), identifying "enterprise" and "communicator" applications is not always clear-cut, nor are the ramifications of its proposal on "communicator" users of little consequence. For example, Response Trak would assign access numbers in the "communicator" category. However, some toll free numbers, such as Sprint's FONCARD access number, are widely advertised and used by millions of its customers – hardly a "few-to-one" or "one-to-one" application. It would be extremely costly to Sprint and confusing to its customers if Sprint were forced to give up its widely used 800 access code and migrate to a new number in a new toll free SAC. It is simply not true, as Response Trak posits (para. 22) that Sprint has "no vested interest in the number," and that a forced migration would cause only "some minor inconvenience."

Response Trak's proposal to segregate "enterprise" and "communicator" toll free numbers is nothing more than a variation of the partitioning proposal already considered and rejected by the Commission.⁵ Re-examining this issue serves no useful purpose and delaying implementation of the 877 SAC to perform such re-examination would be contrary to the public interest.

Sincerely,



Norina Moy

Director, Federal Regulatory Policy
and Coordination

automated as opposed to dial-up access to the SMS database, "is an individual business decision made on the part of each RespOrg" (*See Toll Free Service Access Codes, Report and Order*, 11 FCC Rcd 2496, 2501 (para. 22) (1996)). Because MGI is available to any Resp Org/carrier that chooses to invest in it, Response Trak's assertion that use of the MGI by larger Resp Org/carriers is somehow "anticompetitive" (March 13 letter, p. 3) is without merit.

⁵ *See Toll Free Service Access Codes, Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 11162, 11205 (para. 67) (1997). Indeed, Response Trak itself acknowledges that its proposal is "in the nature of a 'domain' or 'partitioning' approach" (para. 49).

cc: Honorable William Kennard, Chairman
Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani
Geraldine Matise
Anna Gomez
Robert Keller, counsel for Response Trak